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Cerro Wire & Cable Co., Inc. and Pace International Union, Paper, Allied Industrial, Chemical & Energy Workers, AFL-CIO. Case 10-CA-33397

April 23, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS COWEN
AND BARTLETT

This is a refusal-to-bargain case in which the Respondent seeks to contest the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and first amended charge filed on November 9, 2001, and January 23, 2002, respectively, the General Counsel issued the complaint on January 25, 2002, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 10-RC-15164. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with defenses, admitting in part and denying in part the allegations in the complaint.

On February 22, 2002, the General Counsel filed a Motion for Summary Judgment. On February 25, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information, but contests the validity of the certification based on its objections to conduct alleged to have affected the results of the election in the representation proceeding. It also denies that the requested information is relevant and necessary to the Union's role as bargaining representative.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We, therefore, find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's requests for information. The Respondent's answer admits that the Union requested it to bargain and to furnish information and further admits that it has refused to bargain and provide the requested information.

In its August 6, September 4, and October 8, 2001 letters, the Union requested the following information from the Respondent: the total number of employees in the bargaining unit; the number of male employees; the number of female employees; the average age of bargaining unit members; the number of years each employee has worked for Respondent; a listing of the hourly rates and the number of employees in each rate; the average straight time hourly rate for the bargaining unit for the last 3 years; the number of straight time hours worked in each of the last 3 years; the number of overtime hours worked in each of the last 3 years; pension data for each bargaining unit member; health insurance information; life insurance information, including death, accidental death, and long term disability; and summary plan descriptions for all insurance of each employee in the bargaining unit.

Although the Respondent's answer denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it appears to do so based on its objections to the election, i.e., its assertion that the Union interfered with the representation election, the election results were procured by fraud, and the election should be overturned. In any event, it is well established that all of the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request. See *Maple View Manor, Inc.*, 320 NLRB 1149 (1996); *Holiday Inn Coliseum*, 303 NLRB 367 (1991); *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977). The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary Judgment¹ and will order the Respondent to bargain and to furnish the requested information.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is and has been at all times material herein an Alabama corporation with an office and place of business in Hartsalle, Alabama, where it is engaged in the manufacture of residential electrical wire and cable.

¹ Chairman Hurtgen did not participate in the Board's Decision and Certification of Representative and Members Cowen and Bartlett did not participate in the underlying representation proceeding. They find, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations, sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Alabama. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held October 11 and 12, 2000, the Union was certified on August 22, 2001, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed by the Employer at its Hartselle, Alabama facility, but excluding all office clerical employees, professional employees, lead persons, quality-control employees, the maintenance crib attendant, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

On or about August 6, September 4, and October 8, 2001, the Union requested the Respondent to bargain and to furnish information. Since August 6, September 4, and October 8, 2001, respectively, the Respondent has failed and refused to bargain and to furnish the Union the information requested. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after August 6, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry*

Co., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Cerro Wire and Cable Co., Inc., Hartselle, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Pace International Union, Paper, Allied Industrial, Chemical & Energy Workers, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed by the Employer at its Hartselle, Alabama facility, but excluding all office clerical employees, professional employees, lead persons, quality-control employees, the maintenance crib attendant, guards, and supervisors as defined in the Act.

(b) Furnish the Union information it requested on August 6, September 4, and October 8, 2001.

(c) Within 14 days after service by the Region, post at its facility in Hartselle, Alabama, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event

² If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 6, 2001.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 23, 2002

Peter J. Hurtgen,	Chairman
William B. Cowen,	Member
Michael J. Bartlett,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Pace International Union, Paper, Allied Industrial, Chemical & Energy Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed by us at our Hartselle, Alabama facility, but excluding all office clerical employees, professional employees, lead persons, quality-control employees, the maintenance crib attendant, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on August 6, September 4, and October 8, 2001.

CERRO WIRE AND CABLE CO., INC.